

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-08

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales and use tax to materials and equipment

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] has entered into a contract for the construction of an expansion of a Biosolids Treatment Facility for the city of [A TENNESSEE CITY], Tennessee. The facility is owned by the City of [A TENNESSEE CITY]. The facility is used for the

treatment and processing of sewage sludge. A major part of the contract is the construction of a Sludge Control Building along with access roads to the building. These facilities are described in the attached contract drawings. Specific materials to be used for which exemption is sought include the following:

1. All processing equipment, comprised of pumps, tanks, piping, fittings and accessories constructed to treat sewage.
2. All concrete used for construction of this pollution control facility.
3. All site materials (paving, crushed rock) provided as part of the pollution control facility.
4. Building materials (masonry, steel, roofing, doors, finishes, specialties, mechanical, electrical) utilized for the construction of the Control Building.

ISSUE

Whether materials and equipment to be used in fulfillment of the above-described contract will be subject to sales and use tax.

RULING

Processing equipment, comprised of pumps, tanks, piping, fittings and accessories constructed to treat sewage would be exempt from sales and use tax. Materials used for construction of the control building would be exempt from sales and use tax. Materials used for the construction of access roads would be exempt.

ANALYSIS

The Sales and Use Tax, T.C.A. § 67-6-101, et seq., imposes a sales tax on all sales of tangible personal property or specifically taxable services to a consumer or any person for any purpose other than for resale, unless subject to an exemption. T.C.A. § 67-6-209 imposes a contractor's use tax on tangible personal property used by a contractor in fulfillment of a contract if that property was not previously subject to sales or use tax. Materials sold to or used by a contractor to improve real property are subject to sales or use tax unless exempted by law.

T.C.A. Section 67-6-206 exempts industrial machinery from the sales and use tax. "Industrial machinery" is defined in relevant part by T.C.A. Section 67-6-102 (12) to mean:

- (A) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, . . . , or pollution control facilities

primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is . . . or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems,

* * *

(iv) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

The cited definition of pollution control facilities was added into the law by 1991 Tenn. Public Acts 503. The legislative history of that act indicates a legislative intent to create a tax exemption to offset the cost of pollution control requirements imposed by federal law. *See*, comments of Rep. Kisber before the House Conservation Committee on March 6, 1991 relative to House Bill 771. Further, on May 29, 1991, before the Fiscal, Ways and Means Committee, Sen. Dunnivant specifically cites a municipal sewage system as an example of the kind of system to be affected by the bill. Finally, Rep. Kisber, before the House Conservation Committee on March 6, 1991 relative to House Bill 771, specifically mentions access roads as intended to be within the scope of the exemption.

Applying these statutory provisions to the facts, the exemption for industrial machinery would apply to the use by the taxpayer as a contractor with the city of [A TENNESSEE CITY] of materials and equipment for a sewage system, which would include machinery, equipment and any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution. Materials used for the construction of access roads would also be within the scope of the exemption.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 2-8-96